No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS AND
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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ARGUMENT

1. (a) Respondent's contention that the decision below is consistent with the national labor policy (Resp. Br. 4-7) rests on a false premise concerning the substance of the agreement between the Union and the Company.[1] Respondent says: "Petitioner's Union bargained for and

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[1] Throughout this Reply Brief, "Pet." will refer to the Petition for a Writ of Certiorari herein, including the Appendix thereto; "Resp. Br." will refer to Respondent's Brief in Opposition to the Petition.

agreed to the strike/lock-out option as the final step in dispute resolution if the grievance procedure failed to resolve the matter." *Id.* at 7. But as the Court of Appeals found, the "agreement does *not* expressly indicate whether a strike is the only option the Union has if the employer refuses to submit a grievance to arbitration." Pet. 8a, emphasis added. Nothing in the provisions of the agreement quoted as Resp. Br. 1-2 or in Respondent's Appendix is to the contrary. Indeed, although Respondent strives mightily to convey the opposite impression there is nothing in the record here which expressly precludes the Union or the employees from bringing suit to enforce the contract if (1) an employee grievance is not resolved between the Union and the Company in the course of the grievance procedure and (2) neither party exercises its contractual right to resort to economic weapons to resolve the grievance.

When an employer made the identical argument in *Associated General Contractors* v. *Illinois Conference of Teamsters ("Teamsters")*, 486 F.2d 972 (7th Cir., 1973), then-Judge Stevens wrote in immediately pertinent part:

> Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566. But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do. [486 F.2d at 976, quoted more fully at Pet. 6-7.]

The present case, as we develop in the Petition, involves the same question of contract construction that was before the Court in *Teamsters*, for it is as true here as it was there that "there is no plain language in the contract compelling the parties to use force instead of reason in resolving their differences." *Id.* In this respect, the agreement differs fundamentally from that which was at issue in the Seventh Circuit decision relied on at Resp. Br. 15-16, *Huffman* v. *Westinghouse Elec. Corp.*, 752 F.2d 1221 (1985). As the *Huffman* court explained in distinguishing *Teamsters* and another Seventh Circuit decision: "The crucial difference between the contracts at issue in the cases discussed above and the one in this case is that this contract contains a finality provision." *Id.* at 1224.[2]

Consequently, while we of course fully accept the policy of § 203(d) of the Labor-Management Relations Act of 1947 ("LMRA"),[3] Respondent's reliance thereon is entirely misplaced. Unavailable to Respondent for the same reason are two other well-settled rules, which are derived from § 203(d): that employees are bound by the grievance procedure for which their Union bargains (Resp. Br. 5-7), and that "employees who are unhappy with the final results of their grievance procedure" may not "seek review in the federal courts" (*id.* at 5).[4]

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[2] In *Huffman*, the finality provision read:

> The Company's reply to a grievance will be considered final at any level of the grievance procedure (local or appeal) and the grievance closed, if written notification to the contrary is not received within thirty (30) days of the date of such reply. [*Id.* at 1222.]

The agreement in the present case has no similar language.

[3] Section 203(d) provides in pertinent part:

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

[4] See, *e.g.*, *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 653 (1965); *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 562-63 (1976) (expressly citing and relying on § 203(d)).

(b) Point II of the Brief in Opposition is also predicated almost entirely on the fallacious theory that the employees here had a "final resolution of [their] grievance through the grievance procedure," and on § 203(d). Resp. Br. 10; see also *id.* at 11-16. As we showed in the Petition, that theory assumes the answer to the contract interpretation question to be decided in this case. And Respondent does not even do business with the Court of Appeals decisions that are contrary to its position.[5]

2. In short, application of § 203(d) in any given case requires that the "method agreed upon by the parties" be ascertained. And where the parties have not reached a "final adjustment" by that method, § 203(d) does not authorize, let alone require the courts to disclaim the jurisdiction vested in them by LMRA § 301. It is the policy embodied in that provision which should control the decision of the question presented herein. Respondent's felt necessity to reduce the seminal decision in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, to a holding with respect to the enforceability of arbitration agreements (Resp. Br. 5-6), only confirms how drastically its position—and that of the court below—departs from § 301's basic policy. See Pet. 8-11.

Thus, the conflict between the Sixth and Fifth Circuits, on the one hand, and the Seventh, Ninth and Tenth, on the other (Pet. 5-7), should be resolved not only to achieve "uniform application of federal law in

[5] While *Breish* v. *Ring Screw Works*, 397 Mich. 586, 248 N.W. 2d 526 (1976), disscused at Resp. Br. 11-13, is in accord with those decisions, *Breish* does go one step further than is necessary to decide the present case. There the Union did *not* join in the employees' suit. Here the Union representative exercised its authority to support the grievance by joining in this suit. Thus, in this case in contrast to *Breish*, no question arises with respect to *Anchor Motor Freight, supra*, or *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953) cited at Resp. Br. 14.

the Circuits" (Resp. Br. 8; cf. Pet. 4-5), but also to vindicate the true national labor policy.[6]

CONCLUSION

For the foregoing reasons and those stated in the Petition for a Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

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[6] Plaintiff's assertion that provisions which release the parties from their no-strike and no lock-out pledge where a grievance has not otherwise been adjusted "arise in a very small percentage of collective bargaining agreements in this country" (Resp. Br. 9) is unsupported by empirical evidence. And, in any event, the construction that under such agreements a grievance can be vindicated only by strikes to the exclusion of the statutory judicial remedy, is so patently unsound in principle, as three Circuits have recognized, that it should be promptly disapproved.